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Crittenden Research, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CRITTENDEN RESEARCH, INC.,
3990 Old Town Avenue, Suite 300
San Diego, CA 92110

Plaintiff,

vs.

BURNS & WILCOX, LTD.
30833 Northwestern Highway
Farmington Hills, MI 48334

Defendant.

Case No. 3:09-cv-00378-IEG-NLS

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE AND DECLARTORY
RELIEF AND FOR DAMAGES**

JURY TRIAL DEMANDED

Plaintiff Crittenden Research, Inc. ("Crittenden"), by its attorneys, brings this action against Burns & Wilcox, Ltd. ("Burns & Wilcox"), and for its causes of action states as follows:

INTRODUCTION

1. By this Complaint, Crittenden seeks statutory damages, actual damages, injunctive relief, and its attorneys' fees and costs pursuant to the Copyright Act, 17 U.S.C. § 501 *et seq.* together with direct and consequential damages for breach of contract. Burns & Wilcox has systematically, regularly and repeatedly, and without authorization, reproduced multiple complete issues of a newsletter published by Crittenden and in which Crittenden owns the copyright.

2. Burns & Wilcox's regular, unauthorized reproduction of multiple issues of the newsletter constitutes willful violation of the Copyright Act and breach of contract.

JURISDICTION

3. This is an action for actual and statutory damages pursuant to the Copyright Act, 17 U.S.C. §§ 101, et seq, and for breach of contract. This Court has subject matter jurisdiction over this action pursuant to, inter alia, 28 U.S.C. §§ 1331, 1332 and 1338(a).

4. Upon information and belief, this Court has personal jurisdiction over Burns & Wilcox because, among other reasons, Burns & Wilcox purposefully directs activities towards California; regularly conducts and solicits business in California, including business which its infringement of Crittenden's copyrights is intended to facilitate; derives substantial revenues from goods and/or services provided in California; and purchased publications, including that which is the subject of this action, from a corporation in California.

5. Venue is proper in this Court pursuant to, inter alia, 28 U.S.C. § 1400(a).

PARTIES

6. Plaintiff Crittenden is a corporation organized under the laws of California, with its principal place of business in San Diego, California.

7. Upon information and belief, defendant Burns & Wilcox is a corporation organized under the laws of Michigan, with its principal place of business in Farmington Hills, Michigan. Upon information and belief, Burns & Wilcox operates thirty-eight offices in twenty-four States, including six offices in California and one in San Diego.

FACTUAL BACKGROUND

8. Crittenden owns, publishes and is the copyright holder in the publication *Specialty Coverages Insider* (the "Publication"). Individual subscriptions to the Publication sell for \$1,767 annually. Subscriptions for corporations with higher usage patterns, including without limitation where the Publication is used by or for the benefit of numerous employees, are sold for significantly higher prices.

9. The Publication constitutes original material authored by Crittenden pursuant to the Copyright Act. Crittenden has complied with the copyright law and is the owner of the exclusive copyrights therein, including the rights infringed by Burns & Wilcox.

10. The Register of Copyrights has issued Certificates of Registration Numbers TX 6-546-238, TX 6-567-015, TX 6-612-719, TX 6-633-432, TX 6-643-549 and TX 6-661-054 to Crittenden for the Publication.

11. Since no later than 2005, Burns & Wilcox has subscribed to the Publication. Initially, Burns & Wilcox purchased a group subscription permitting up to twenty-eight (28) copies of the Publication to be provided to its employees. Beginning in 2007, however, Burns & Wilcox terminated its group subscription agreement for the Publication and entered into a single-user subscription agreement.

12. The single user subscription agreement that Burns & Wilcox entered into in 2007 permits only one specifically designated employee to receive the Publication. The agreement expressly prohibits “[r]egular or full-issue reproduction, forwarding to unauthorized individuals (including without limitation, persons within the subscriber’s or end user’s company)”.

13. In addition, each issue of the Publication contains prominent copyright notices and warnings against unauthorized reproduction or access, including, for example, that it “is illegal to forward or otherwise distribute” the Publication without permission. Furthermore, the e-mails transmitting each issue of the Publication to subscribers warn that “You may not make copies from your electronic version of this newsletter, even for internal use within your own company.”

14. Despite the terms of the single-user subscription agreement with Crittenden, Burns & Wilcox engaged in a pattern of making multiple copies of complete issues of the Publication, for distribution to its employees.

COUNT ONE:

COPYRIGHT INFRINGEMENT

15. Crittenden hereby repeats and realleges the allegations contained in paragraphs 1 through 14 of this Complaint with the same force and effect as if fully set forth herein.

16. Notwithstanding the provision in the Copyright Act that the reproduction, display, and distribution of copyrighted works may lawfully be made only by the copyright owner or with its authorization, Burns & Wilcox has willfully and without Crittenden’s permission infringed

1 Crittenden's copyrights by engaging in the systematic, regular, and repeated reproduction, display
2 and distribution of multiple complete copies of issues of the Publication.

3 17. In light of the foregoing, Crittenden is entitled to the remedies provided for in 17
4 U.S.C. §§ 502, 504-505.

5 **COUNT TWO:**

6 **BREACH OF CONTRACT**

7 18. Crittenden repeats and realleges the allegations contained in paragraphs 1 through 17 of
8 this Complaint with the same force and effect as if set forth fully herein.

9 19. Crittenden and Burns & Wilcox entered into a valid and enforceable agreement, under
10 which Crittenden provided to Burns & Wilcox a single-user subscription to the Publication.
11 Pursuant to the agreement, Burns & Wilcox was prohibited from making reproductions of complete
12 issues of the Publication and was prohibited from forwarding the Publication to unauthorized
13 individuals.

14 20. Burns & Wilcox breached its agreement with Crittenden by regularly making
15 unauthorized reproductions of complete issues of the Publication and by forwarding the Publication
16 to unauthorized individuals, including non-subscribing employees of Burns & Wilcox.

17 21. As a direct result of Burns & Wilcox's breach of its agreement with Crittenden,
18 Crittenden has suffered, and continues to suffer, direct and consequential damages.

19 WHEREFORE, Crittenden demands judgment in its favor and against Burns & Wilcox, as
20 follows:

21 (1) that Burns & Wilcox and its employees and agents be permanently enjoined from,
22 directly or indirectly, infringing in any manner any of Crittenden's copyrighted material in
23 violation of the Copyright Act, 17 U.S.C. § 501 et seq.;

24 (2) that Burns & Wilcox be required to pay Crittenden statutory damages incurred as the
25 result of Burns & Wilcox's infringement of Crittenden's copyrights;

26 (3) that Burns & Wilcox be required to pay Crittenden enhanced statutory damages as a
27 result of Burns & Wilcox's willful infringement of Crittenden's copyrights;
28

(4) that, in the alternative, Burns & Wilcox be required to pay Crittenden actual damages and profits derived from Burns & Wilcox's infringing use of the Publications as a result of Burns & Wilcox's infringement of Crittenden's copyrights;

(5) that Burns & Wilcox be required to pay Crittenden its direct and consequential damages incurred as the result of Burns & Wilcox's breach of its agreement with Crittenden;

(6) that Burns & Wilcox be required to pay Crittenden its attorneys' fees and other costs of this action; and

(7) for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues so triable in this action.

DATED: April 21, 2009

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

By: s/ James E. Grossberg
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CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of April 2009, I directed that a true and correct copy of the foregoing First Amended Complaint be served via email and overnight courier on the following:

Lawrence C. Atorthy, Esq.
Kaufman, Payton & Chapa
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Counsel for Defendant Burns & Wilcox, Ltd.

s/ James E. Grossberg